

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 24 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

SHASHIKANT H PANDYA

Versus

PRESIDENT

Appearance:

MR SN SHELAT for Petitioners

MR SI NANAVATI for Respondent No. 1

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 05/07/96

ORAL JUDGEMENT

Shashikant Himatlal Pandya has filed this petition under article 227 of the Constitution of India against the order of the Labour Court, Rajkot in Reference (LCR) No.393/79 decided on 11.9.84. After admission of this petition, original petitioner Shashikant Himatlal Pandya had died on 17.12.91 and

therefore, his heirs and legal representatives are brought on record as per the order passed on 5.3.90.

2. Original petitioner Shashikant Himatglal Pandya was appointed as a Store Keeper- cum- Clerk with effect from 1.1.93 by the respondent-society. He was working in that capacity and in the month of April 1979 he was drawing the pay of Rs. 560.70 p. His services were terminated by a telegram dated 24.4.1979 accompanied with a letter of the same date without issuing any show cause notice and without holding any departmental inquiry against him. Though he made representation to the respondent-society to withdraw the order of termination and to reinstate him in his original post, no action on the said request was taken. He had also not received his pay for the month of February and March 1979 and a demand for the same was made by sending legal notice on 20.4.79 along with the request for reinstatement . As no action was taken in respect of the same, he consequently approached the Government and then reference was made to the Labour Court as under:

" Whether Shashikant Himatlal Pandya should be reinstated to his original post with full back wages ?"

Said reference was heard by the learned Presiding Officer of the Labour Court, Rajkot and after giving opportunity to both the sides to lead evidence in respect of their pleadings and contentions, he dismissed the said Reference by coming to the conclusion that there was no retrenchment of the petitioner and that there was merely a discharge on the ground of loss of confidence and he directed both the sides to bear their respective costs.

3. Being aggrieved by the said decision the petitioner has come before this Court. I have heard Mr. D.H. Waghela for Mr. S.N.Shelat for the petitioner. Neither the respondent nor his advocate is present.

4. The learned Presiding Officer of the Labour Court, Rajkot has come to the conclusion that there was no retrenchment of the petitioner workman and there was only a discharge by the employer on account of losing confidence in the workman. I am aware that I am not sitting as an appellate court and my powers are limited. I am entitled to interfere with the findings of the learned Presiding Officer of the Labour Court if they could be said to be illegal or perverse. The parties are not at all in dispute of the fact that the petitioner was

appointed as Store Keeper-cum-Clerk by the respondent-society with effect from 1.1.73 and by the letter as well as the telegram dated 20.4.79 his services were terminated. It is also an admitted fact that before issuing the said telegram as well as the letter, neither show cause notice was issued to the petitioner nor any departmental inquiry was held against him. It is also stated in the letter that while considering the order of termination of a workman the court is entitled to lift the veil and to consider the material before him in order to find out as to whether the said termination is a mere simplicitor termination, or a dismissal with putting blame on the workman. Therefore, it is necessary to see the wording of the letter issued by the respondent-society. In the said letter the respondent society has stated as under:

" As communicated to you by our telegram of date your service is terminated with effect from today as clerk-cum-store-keeper at our Pradyumnanagar Family Welfare Centre since you have failed to carry out your duties and misconducted the affairs of the First Aid classes as entrusted to you.

You must have remained absent for a long time without notice or without our consent. You have collected large amount of First Aid class from the participants which are not deposited by you in our Bank account inspite of your promise to do so and inspite of our repeated reminders to you. You have neglected the office work and accounts of Pradyumnanagar Centre for all these years with the result that the Institution had to suffer very badly."

If the above wording of the said letter is considered, then it would be quite clear that the employer has alleged against the workman that the workman had committed misconduct by remaining absent without leave as well as by not crediting the amounts recovered by him in the bank account of the employer. Therefore, from the wording of the above mentioned letter, the conclusion to which the learned Presiding Officer of the Labour Court has arrived at could not be at all accepted and said to be proper and legal.

5. If the order of the learned Presiding of the Labour Court is seen then it would be clear that in the said reference, the respondent society had led evidence

in order to show that the present petitioner had committed misappropriation of the funds of the society. The learned Presiding Officer has also found that though the petitioner could not be solely held to be responsible for the non crediting of the amounts recovered from the participants in the First Aid Class, in the account of the society, he was guilty in not keeping proper accounts and not crediting all the amounts recovered by him. Thus the employer has made an attempt to show during the inquiry before the Labour Court that the workman had committed misappropriation and in the letter of termination, the employer has alleged that the workman had committed misconduct by not crediting the amounts of the employer in the bank account of the employer. Therefore, it is very difficult to hold that the dismissal of the workman is a mere and simple discharge on account of loss of confidence. When in view of the contents of the letter as well as the evidence led by the employer before the Labour Court, the conclusion to which the learned Presiding Officer has arrived at is obviously perverse and deserves to be set aside. When the petitioner was not dismissed after holding a departmental inquiry and without giving him any opportunity to show cause as regards the allegations made against him, his dismissal is illegal and improper and he is liable to be reinstated. The case of the petitioner is covered by the decision of the Supreme Court in the case of Chandu Lal vs. The Management of M/s Pan American World Airways Inc. A.I.R. 1985 SC 1128 in which it has been observed as under:

"It is difficult to agree with the finding of the Labour Court that even service is terminated on the basis of loss of confidence the order does not amount to one with stigma and does not want a proceeding contemplated by law preceding termination. Want of confidence in an employee does point out an adverse facet in his character as the true meaning of the allegation is that the employee has failed to behave up to the expected standard of conduct which has given rise to a situation involving loss of confidence. In any view of the matter, this amounts to a dereliction on the part of the workman, and therefore, the stand taken by the management that termination for loss of confidence does not amount to stigma has to be repelled. In our opinion, it is not necessary to support our conclusion by reference to precedents or textual opinion as a commonsense assessment of the matter is sufficient to dispose of this aspect. '

Retrenchment ' is defined in S.2(oo) of the Industrial Disputes Act and excludes termination of service by the employer as a punishment inflicted by way of disciplinary action. If the termination in the instant case is held to be grounded upon conduct attaching stigma to the appellant, disciplinary proceedings were necessary as a condition precedent to infliction of termination as a measure of punishment. Admittedly this has not been done. Therefore, the order of termination is vitiated in law and cannot be sustained."

6. Though I am accepting the contention of the learned advocate for the petitioner that the petitioner's dismissal is illegal and improper and that he is entitled to reinstatement, I am unable to accept his contention that the petitioner is entitled to whole of the back wages.

7. The petitioner's services were terminated on both the counts. He had remained absent without any leave and without any reasonable cause and he had also not credited the amounts received by him from the participants in First Aid Class. From the materials produced before the Labour Court it is clear that both these things have taken place. No doubt, the workman is entitled to reinstatement for the failure on the part of the employer to hold proper departmental inquiry but merely because of the same, it could not be said that the workman is entitled to full backwages. In the case of D.K.Yadav vs. J.M.A Industries Ltd. 1993(3) SCC 259 the Supreme Court has set aside the dismissal of the workman who was dismissed for remaining absent without sanctioned leave without holding any departmental inquiry and in that case, the workman was awarded 50 percent of backwages on the ground that he was to be equally blamed for the impugned action. Therefore, in the circumstances I hold that the petitioner was entitled to be reinstated and was entitled to get only 50 percent of the backwages from the date of termination of his services till his death and he was entitled to get full wages for the month of February and March 1979 for which he had worked.

8. Thus I hold that that present petition will have to be allowed . The order passed by the Presiding Officer of the Labour Court, Rajkot dated 11.9.84 in Reference (LCR) No. 393/79 is set aside and instead the following

order is passed.

9. Shashikant Himatlal Pandya was entitled to be reinstated in his original post and he was entitled to get 50 percent full back wages from the date of termination i.e. 24.7.79 till the date of his death which took place on 17.12.91 with increments in the pay scale if any. His pay for the month of February and March 1979 amounting to Rs. 1992.70 is also to be paid to the Legal Representatives. Respondents to pay the said amount within three months from today. The legal representatives of the original petitioner are entitled to get 12 percent interest thereon from the date of this order. Rule made absolute. In the circumstances the parties to bear their respective costs.

(S.D.Pandit.J)